

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

THE CITY OF FERGUSON

Defendant.

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Case No: 4:16-cv-180

Hon. Catherine D. Perry

CITY OF FERGUSON’S INITIAL STATUS REPORT

Defendant, the City of Ferguson (“the City”), respectfully submits this Initial Status Report regarding its progress to date on implementing the requirements set forth in the Consent Decree.

I. Background

This Court entered an order approving the Consent Decree on April 19, 2016. Paragraph 456 of the Consent Decree provides that,

Within 180 days of the Effective Date, FPD will file with the Court, with a copy to the Monitor and DOJ, a status report. This report will delineate steps taken by FPD during the reporting period to implement this Agreement; FPD’s assessment of the status of its progress; plans to correct any problems; and responses to any concerns raised in the Monitor’s previous semi-annual report. Following this initial status report, FPD will file a status report every six months thereafter while this Agreement is in effect.

(Consent Decree, ¶ 456). Under the terms of the Consent Decree, the effective date was April 19, 2016, and the Consent Decree requires that the City file its initial status report on October 17, 2016. (*Id.*, ¶¶ 456, 465(27)).

The following discussion identifies milestone events that have been accomplished within the initial six month period following the April 19, 2016 effective date. The discussion identifies

significant steps that have been undertaken toward meeting deadlines set forth in the Consent Decree both before and after the September 7, 2016 status hearing before this Court. This discussion references the progress described in the Memorandum for the Court Outlining the Timeline for Consent Decree Requirements (ECF No. 49), which was filed on September 2, 2016, and subsequent efforts to achieve compliance with the provisions of the Consent Decree.¹ This discussion primarily focuses on efforts taken to date to implement the reforms set forth in the Consent Decree in the Ferguson Police Department (“FPD”) and the Ferguson Municipal Court.

II. The City’s Efforts To Comply With The Terms of the Consent Decree Prior To The September 7, 2016 Status Hearing

A. Appointment Of The Monitor

On July 22, 2016, the Court approved the selection of Clark K. Ervin of Squire Patton Boggs LLP to serve as the monitor overseeing implementation of the Consent Decree. The joint selection of Mr. Ervin followed several rounds of telephone and in-person interviews, including a final interview that took place in Ferguson, Missouri on July 12, 2016 where members of the community were able to ask Mr. Ervin, his team, and the other finalists questions. Following Mr. Ervin’s appointment to serve as the monitor, the parties had introductory telephone conference calls in August 2016, and on September 8, 2016, Mr. Ervin and his team and the Department of Justice met with various employees of the City of Ferguson, members of the FPD, Ferguson Municipal Judge Micah Hall, and the members of the Ferguson City Council.

B. The Ferguson Police Department

Ferguson Police Chief Delrish Moss started on May 11, 2016 following a nationwide search. Chief Moss quickly familiarized himself with the then upcoming deadlines of the

¹ The City also incorporates the Memorandum for the Court Outlining the Timeline for Consent Decree Requirements by reference in this Initial Status Report.

Consent Decree and worked expeditiously to make sure that the City complied with many of the deadlines that came due over the first 120 days following the effective date. For instance, Chief Moss conducts monthly command staff meetings regarding community oriented policing and has discussed the provisions of the Consent Decree with FPD officers. (Consent Decree, ¶ 28). Additionally, Chief Moss was the primary drafter of many new FPD plans and policies, namely those that address recruitment of new officers, background investigations for the hiring of new officers, internal investigations, the duty of candor within the FPD, the duty to report misconduct, and non-retaliation against those who make complaints. (*Id.*, ¶¶ 288, 362, 384, 397).

C. The Ferguson Municipal Court

Over the past two years, approximately \$1.5 million in fines in the Ferguson Municipal Court have been stayed, and more than 30,000 individual open cases have been dismissed, which is in accord with the comprehensive amnesty provision outlined in the Consent Decree. (Consent Decree, ¶¶ 326-27). Additionally, consistent with the Consent Decree, there are no pending failure to appear charges; any pending failure to appear charges were previously dismissed. (*Id.*) The City has also set up an online payment system that accepts payments at any time and in any amount. (*Id.*, ¶¶ 336-37). The City has also taken great efforts to ensure that defendants appearing in the Ferguson Municipal Court are apprised of the charges that they face and the options for resolving a case. The City has ensured that defendants in the Ferguson Municipal Court have the option to make payments on an installment basis, and all defendants are offered the opportunity to perform community service in lieu of paying a fine. (*Id.*, ¶ 339-40, 343).

The City has also modified the way in which warrants are issued for municipal offenses.

(*Id.*, ¶ 348). Namely, if a defendant misses an initial court appearance, the Municipal Court sends the defendant a summons letter with a new court date. If that defendant misses a second court date, the Municipal Court schedules a show cause hearing. A warrant is issued only if the defendant misses that show cause hearing. If a defendant who pleads guilty to a municipal offense misses a scheduled payment, the Municipal Court schedules a show cause hearing as to why the payment was not made on time. A defendant can appear at the Municipal Court and request a continuance of that show cause hearing with the Clerk. A warrant is not issued if a defendant appears at the show cause hearing and explains that he or she is unable to make a payment in accord with the payment plan. In that scenario, a defendant may receive an extension by which to make the payment, receive a new payment plan, or have the fine converted to community service. If, however, a defendant does not request a continuance and misses the show cause hearing, a warrant is issued.

III. The City's Efforts To Comply With The Terms Of The Consent Decree Following The September 7, 2016 Status Hearing

A. The City's New Hires

Since the status hearing on September 7, 2016, the City has hired key individuals to help with the implementation of the consent decree. At the time of the status hearing, the positions discussed *infra* were either vacant or were filled on an interim basis. The City is optimistic that the hiring of individuals to fill these positions will allow it to expeditiously move forward with meeting the requirements detailed in the Consent Decree.

Namely, on October 1, 2016, the City hired a new City Prosecutor, Lee Goodman. Mr. Goodman will also work with Mr. Ervin and his team and the Department of Justice in connection with the provisions of the Consent Decree that focus on the prosecution of ordinance violations in the Ferguson Municipal Court. The City has already started to take efforts to ensure

that the Municipal Court operates independently of the City Prosecutor. (Consent Decree, ¶ 357). For example, separate files are maintained for the City Prosecutor and the Municipal Court.

On October 10, 2016, Commander Frank McCall began with the FPD. Commander McCall was previously with the Berkeley Police Department. His responsibilities include serving as the Consent Decree Coordinator and assisting Chief Moss with drafting and/or revising existing policies to conform with the requirements of the Consent Decree. As the Consent Decree Coordinator, Commander McCall will also serve as a liaison between Mr. Ervin and his team and the Department of Justice and will fulfill the other roles as specified in the Consent Decree. (*See* Consent Decree, ¶ 454).

On October 11, 2016, the City also retained a new City Attorney, Apollo Carey of the law firm Lewis Rice LLC. Mr. Carey will also coordinate with Mr. Ervin and his team and the Department of Justice in ensuring that the City timely institutes the requirements delineated in the Consent Decree. For instance, Mr. Carey will work with Mr. Ervin and his team and the Department of Justice in revising the Civilian Review Board (“CRB”) ordinance discussed *infra* and revising the Memorandum of Understanding with the Ferguson-Florissant School District. (Consent Decree, ¶¶ 211, 404). Additionally, on October 11, 2016, the City also hired a new City Clerk, Octavia Pittman.

B. Status Updates Provided To Mr. Ervin And His Team And The Department Of Justice

Following the September 7, 2016 status hearing, representatives from the City, Mr. Ervin and his team, and the Department of Justice have had weekly status calls to discuss the City’s progress on the Consent Decree. While the Consent Decree calls for a monthly status call (Consent Decree, ¶ 440), these weekly calls have allowed for an open line of communication

between all parties and served as a means to update Mr. Ervin and the Department of Justice on the City's most recent progress with implementing the Consent Decree.

C. Additional Work Toward Meeting The 180-Day Deadlines In The Consent Decree

The City has continued its community engagement efforts, and has worked toward meeting the 180-day deadlines in the Consent Decree that address this topic. Namely, the City is in the process of developing how to set up the small group facilitated discussions between officers of the FPD and the community. (Consent Decree, ¶ 19). The City has scheduled an event on October 21, 2016 through Urban Strategies, which will include a roundtable discussion with members of the FPD attending. The City is also going to work with Urban Strategies about outreach into and creating a dialogue with the neighborhood associations in Ferguson. (*Id.*, ¶ 25).

The City has also developed a policy on creating correctible violations for traffic offenses wherein an individual who receives a ticket can fix the issue that caused the violation in lieu of paying a fine. (*Id.*, ¶ 94). The City has eliminated all previous stop orders or "wanted" for municipal offenses, and only issues a stop order or "wanted" when necessary in the pursuit of state charges where probable cause exists in accordance with requests from the County Prosecuting Attorney. (*Id.*, ¶¶ 96-97). The City is also in communications with its information technology vendor to develop a means to collect data on stops and seizures, use-of-force practices, and to ensure that all allegations of misconduct against FPD officers are received, documented, and tracked. (*Id.*, ¶¶ 109, 195, 369).

The City has developed a policy for internal investigations of complaints received about the FPD. (*Id.*, ¶ 384, 397). The City has also appointed Lt. Dilworth to serve as the Crisis Intervention Coordinator to facilitate communication between the FPD and the local mental

health community, and the City has also begun to develop policies for an annual assessment of its crisis intervention model. (*Id.*, ¶¶ 197, 206). All FPD officers are equipped with body-camera and microphones and the City has developed a policy on the storage and retention of this footage. (*Id.*, ¶¶ 245, 250). The FPD has also developed a staffing plan that follows the nationally accepted span of control model. (*Id.*, ¶ 256). And, the City has also drafted a recruitment plan to target the hiring of new officers. (*Id.*, ¶ 282).

The City has also undertaken efforts to ensure that the various entities called for by the Consent Decree are established in a timely manner. Specifically, the Neighborhood Policing Steering Committee (“NPSC”) has been formed. (*Id.*, ¶ 21). Membership in the NPSC is open to all who wish to attend. Additionally, the City plans to introduce an ordinance officially establishing the NPSC within the next month. Moreover, the City has worked with Mr. Ervin and the Department of Justice to revise the existing CRB ordinance. (*Id.*, ¶ 404). The City also plans to introduce the revised CRB ordinance within the next month so that the CRB can begin its work. Last, the City has also worked on establishing a policy regarding the creation of the Force Review Board (“FRB”). (*Id.*, ¶ 189). The City will work with Mr. Ervin and his team and the Department of Justice regarding the membership of the FRB. (*Id.*)

IV. The City’s Assessment Of Its Progress To Date

The City has worked expeditiously over the past six months to implement the requirements as detailed in the Consent Decree. The City is pleased with its progress to date, especially given the many key vacancies that it also had to fill over the past several months. The City is hopeful that it now has a more fulsome team in place that will be able to implement the deadlines in the Consent Decree in a timely manner. The City will continue its goal of ensuring constitutional policing and court practices to serve and protect all members of its community.

The City will also continue to work actively with Mr. Ervin and his team and the Department of Justice to meet the goals set forth in the Consent Decree and to substantiate the aforementioned progress that it has made to date.

Date: October 17, 2016

Respectfully submitted,

THE CITY OF FERGUSON

/s/ Jared L. Hasten

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing was filed electronically on October 17, 2016 with the Clerk of the Court for the United States District Court for the Eastern District of Missouri, Eastern District, and was served by ECF notice by operation of the Court's electronic filing system.

/s/ Jared L. Hasten